

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**J.B., Appellant**

**and**

**DEPARTMENT OF THE ARMY, McALESTER  
ARMY AMMUNITION PLANT, McAlester, OK,  
Employer**

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**Docket No. 08-1987  
Issued: May 7, 2009**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

DAVID S. GERSON, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On July 15, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated June 17, 2008, which found 12 percent impairment of the right and left lower extremities. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant has more than a 12 percent impairment of the right and left lower extremities.

**FACTUAL HISTORY**

On June 25, 2007 appellant, then a 56-year-old carpenter, sustained injury to his right leg, left heel and back when he fell through a hole in an attic and struck a metal table on a concrete floor. He stopped work on June 25, 2007 and returned to light-duty work for four hours per day

on October 31, 2007. The Office accepted the claim for right femur fracture and left calcaneus fracture.<sup>1</sup>

On February 27, 2008 appellant filed a claim for a schedule award. In a March 20, 2008 report, Dr. Wesley M. Stotler, an attending osteopath, provided examination findings and an impairment rating. He noted that appellant underwent open reduction and internal fixation surgery for both the left calcaneus and right distal femur fractures. A physical examination revealed full range of motion of the right knee with slight irritation from the remaining plate and loss of range of motion in the left calcaneus. Dr. Stotler noted that appellant had “some post-traumatic arthrosis within the subtalar joint, which is mild to moderate in nature” of the calcaneus. Range of motion for the left calcaneus was 10 degrees inversion and 10 degrees eversion. Dr. Stotler stated that, in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*),<sup>2</sup> appellant had a 12 percent impairment for the right lower extremity using Table 17-33 due to his knee and distal femur fracture and a 12 percent left lower extremity impairment due to calcaneus fracture.

In a May 19, 2008 report, an Office medical adviser agreed with Dr. Stotler’s impairment rating.

By decision dated June 17, 2008, the Office granted appellant schedule awards for 12 percent permanent impairment of the right and left lower extremities. The period of the awards covered 69.12 weeks of compensation and ran from March 20 to June 7, 2008.

### **LEGAL PRECEDENT**

Under section 8107 of the Federal Employees’ Compensation Act<sup>3</sup> and section 10.404 of the implementing federal regulations,<sup>4</sup> schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup> Chapter 17 provides the framework for assessing lower extremity impairment.<sup>6</sup>

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<sup>1</sup> By decision dated December 12, 2007, the Office issued a loss of wage-earning capacity decision which found that appellant’s part-time modified carpenter job represented his wage-earning capacity and reduced his compensation accordingly.

<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404.

<sup>5</sup> *D.J.*, 59 ECAB \_\_\_\_ (Docket No. 08-725, issued July 9, 2008); *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

<sup>6</sup> A.M.A., *Guides* 523-64.

Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from the attending physician is obtained.<sup>7</sup> Section 17.2j of the A.M.A., *Guides*, entitled Diagnosis-Based Estimates, provide that some impairment estimates are more appropriately rated on the basis of a diagnosis than on the basis of findings on physical examination and instructs the clinician to assess the impairment using the criteria in Table 17-33, entitled Impairment Estimates for Certain Lower Extremity Impairments.<sup>8</sup> When a diagnosis-based impairment rating is applied, it is generally not appropriate to calculate additional impairment based on anatomic or functional based methods (such as limitations of strength or range of motion).<sup>9</sup>

### **ANALYSIS**

Appellant claimed a schedule award pursuant to an accepted right femur fracture and left calcaneus fracture. He submitted a March 20, 2008 report from Dr. Stotler, an attending physician, who provided physical findings and an impairment rating. Using Table 17-33 at 546-547, Dr. Stotler found that appellant had a 12 percent impairment to both lower extremities. The Office medical adviser reviewed Dr. Stotler's report and concurred with his impairment determination.

The reports of Dr. Stotler and the Office medical adviser provided the only evaluation which conforms with the A.M.A., *Guides*. They constitute the weight of the medical evidence.<sup>10</sup> The Office properly determined that appellant has a 12 percent impairment of the right lower extremity and a 12 percent impairment of the left lower extremity. Appellant has not shown that he has a greater impairment.

On appeal, appellant contends that the impairment rating is not adequate as he is unable to do that which he could before the injury, which ended his career. The Board notes that section 8107 and the implementing federal regulations provide a specific number of weeks of compensation for permanent impairment.<sup>11</sup> The amount payable under a schedule award does not take into account the effect that the impairment may have on employment opportunities. Wage-earning capacity, sports, hobbies or other lifestyle activities.<sup>12</sup>

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he has more than 12 percent impairment of the right lower extremity and a 12 percent impairment of the left lower extremity, for which he received a schedule award.

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<sup>7</sup> *Thomas J. Fragale*, 55 ECAB 619 (2004).

<sup>8</sup> A.M.A., *Guides* 546; *see James R. Hill, Sr.*, 57 ECAB 583 (2006).

<sup>9</sup> A.M.A., *Guides* 545, section 17.2j; *Derrick C. Miller*, 54 ECAB 266 (2002).

<sup>10</sup> *See Bobby L. Jackson*, 40 ECAB 593 (1989).

<sup>11</sup> *See* 5 U.S.C. § 8107(c) and 20 C.F.R. § 10.404(a).

<sup>12</sup> *See Denise L. Crouch*, 57 ECAB 161 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 17, 2008 is affirmed.

Issued: May 7, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board